

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 853 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-
and
Hon'ble MR.JUSTICE H.K.RATHOD sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?No :

UNITED INDIA INSURANCE CO. LTD

Versus

UMIYASHANKER POPATLAL JOSHI F/O DECD. DILIPKUMAR U JOSHI

Appearance:

MR PV NANAVATI for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 07/08/2000

ORAL JUDGEMENT

(Per : D. C. Srivastava, J.)

1. With consent of Shri P.V.Nanavati, learned Counsel for the appellant and Shri M.S.Shah, representing the respondent, it is proposed to dispose of this Appeal finally at the admission stage.

2. The Appeal is directed against the Award dated 29.12.1999 under Section 163(A) of the Motor Vehicles Act rendered by Motor Accident Claims Tribunal, Kutch at Bhuj awarding a sum of Rs.3,07,500/- together with interest at the rate of 12 % p.a. from the date of application till deposit with proportionate costs.

3. Shri P.V.Nanavati, has argued that there is no definite evidence regarding age of the deceased and as such minimum income as provided under the schedule should have been taken into consideration by the Tribunal and not that the Tribunal was justified in holding that the monthly income of the deceased was Rs.2000/-. Prima facie finding on prima facie evidence on this count can be challenged by the learned Counsel for the appellant in a written statement to be filed in pending petition under Section 166 of the Motor Vehicles Act. Other grounds of challenge in this Appeal can also be raised in written statement to be filed in a petition under Section 166 of the Motor Vehicles Act. Shri M.S.Shah, states that a petition under Section 166 of the Motor Vehicles Act is pending before the Tribunal.

4. After examining the interim Award we do not find any illegallity on the face of it. Consequently we do not find any merit in this Appeal which is hereby dismissed. The appellant is directed to deposit the amount awarded by the Tribunal less the deposit, if any, already made, within a period of four weeks from today. The amount so deposited shall be disbursed in the light of direction given by the Tribunal. The amount of Rs.25,000/- deposited in this Court shall be remitted forthwith to the Tribunal.

5. The claimants are hereby directed to furnish undertaking before the Tribunal within a period of three weeks from today to the effect that they shall prosecute the application under Section 166 of the Motor Vehicles Act on merits and shall not get the same dismissed in default nor shall withdraw the same. No order as to costs.

sd/-

(D. C. Srivastava, J.)

Date : August 07, 2000 sd/-

(H. K. Rathod, J.)

sas